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**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

FILED

FEB 17 2005

**SECRETARY, BOARD OF
OIL, GAS & MINING**

In the Matter of the Request for Agency
Action by Barrick Resources (USA) and
Barrick Gold Corporation, Requesting Partial
Release of Surety for Mining and
Reclamation Plan ACT/045/017

Order Granting Petition

Docket No. 2004-022

Cause No. M/045/017

I. Introduction

On January 26, 2005, the Utah Board of Oil, Gas & Mining ("Board") held a hearing ("Hearing") pursuant to the provisions of Utah Administrative Code R641-104 to 108 on the Petition of Barrick Resources (USA), Inc. and Barrick Gold Corporation (collectively "Barrick"), for Partial Release of Reclamation Obligations and Reclamation Surety, pursuant to the provisions of §40-8-14(5) Utah Code (2004) and Utah Administrative Code, R647-4-111 and 113. During the hearing, testimony was proffered by Barrick by and through their counsel David L. Deisley, and was presented by the Division of Oil, Gas and Mining, by and through its counsel Steven F. Alder, Assistant Attorney General. This Order sets forth the Board's Findings of Fact, Conclusions of Law, and Order with respect to Barrick's Petition.

II. Findings of Fact

1. Barrick Resources is the owner of the Barrick Mercur Mine ("Mercur Mine"), which is situated in Tooele and Utah Counties, Utah. Commercial operations at the Mercur Mine are conducted under an approved mining and reclamation plan ACT/045/017 (the "Plan").

Mineral production from the mining operations ceased in 1998. Reclamation activities began prior to cessation of commercial operations and continue to the present.

2. Barrick Gold Corporation ("Barrick Gold") is the parent company of Barrick Resources.
3. As financial assurance for the reclamation work required under the Plan, Barrick Resources and Barrick Gold entered into a Self-Bonding and Indemnity Agreement (the "Bonding Agreement") with the Board of Oil, Gas and Mining dated as of February 2, 1998, in the amount of \$8,509,500.
4. Barrick Resources and Barrick Gold also entered into a Reclamation Contract with the Board dated as of February 26, 1998.
5. The Reclamation Contract provides for a partial release of surety. Section 6 of the Reclamation Contract states:

If reclamation of discrete sections of the Disturbed Area is completed to the satisfaction of the Division, and the Division finds that such sections are severable from the remainder of the Disturbed Area, Operator may request the Division to certify that Operator has reclaimed such discrete sections of the Disturbed Area in accordance with the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended. If the Division makes such certification, Operator may request to the (Board) that the aggregate face amount of the Surety Contract provided pursuant to paragraph 2 be reduced to an amount necessary to provide for completion of the remaining reclamation. The (Board) shall hear Operator's request for such reduction in accordance with the Board's Procedural Rules concerning requests for Agency Action.

6. The Bonding Agreement also provides for partial release of the financial surety. Section 4 of the Bonding Agreement states:

Upon successful completion of part of all of the obligations secured hereby, the Operator may petition the Board for a final release of part of all of the obligations under the Agreement. Up on such petition, the Division shall conduct an inspection to ascertain whether duties and obligations of the Operator under the Act, the applicable rules and the Permit have been fulfilled. If it is determined that such duties and obligations have been fulfilled, the Board shall release the Operator from part of all of is obligations under this Agreement and shall file a notice of such release in the property records of Tooele and Utah Counties, Utah.

7. In accordance with Section 6 of the Reclamation Contract and Section 4 of the Bonding Agreement, on October 21, 2004, Barrick submitted to the Division of Oil, Gas and Mining (the "Division") an "Application and Request for Partial Release of Surety Mining & Reclamation Plan ACT/045/017." This application was filed with the Board of Oil, Gas, and Mining and docketed as No. 2004-22. Petitioners subsequently filed a Request for Agency Action on November 5, 2004 together with a Motion for Enlargement of time to file the Request for Agency Action. Exhibits and additional copies as required by Rule R641-104-200 were filed with the Request and provided to the Division. Pursuant to the stipulation of Barrick and the Division, the Board issued an Order on December 16, 2004 authorizing Barrick to file an Amended Petition Requesting Partial Release of Surety for Mining and Reclamation Plan ACT/045/017 for the Mercur Mine (the "Plan") and to submit additional Exhibits in support of the Petition. Barrick filed its Amended Petition and Exhibits on December 22, 2004.
8. The following documents were submitted by Barrick in support of its Petition, the Division stipulated to their admission as evidence, and the documents were admitted as evidence:

- a. Application and Request for Partial Release of Surety, Mining & Reclamation Plan ACT/045/017, Barrick Gold Corporation and Barrick Resources (USA), submitted to the Division of Oil, Gas and Mining on October 21, 2004.
 - b. Appendix A – Barrick Resources (USA), Inc. and Barrick Gold Corporation and the Board of Oil, Gas and Mining Self-Bonding and Indemnity Agreement, February 2, 1998.
 - c. Appendix B – Barrick Resources (USA), Inc. and Barrick Gold Corporation and the Board of Oil, Gas and Mining Reclamation Contract, February 26, 1998.
 - d. Appendix C – 2004 Revegetation Surety Release Evaluation, Cedar Creek Associates, Inc. October 2004, as amended by the two revised pages inserted into the 2004 Revegetation Surety Release Evaluation, Cedar Creek Associates, Inc., Fort Collins, Colorado, October 2004, REVISED December 2004.
 - e. Appendix D – Barrick Mercur Mine Photographic Documentation and Narrative.
 - f. Appendix E – Mercur General Site Plan, Revised 2004, Proposed Surety Release Areas (Contours), Golder Associates, Denver, Colorado, Rev. C.
 - g. Appendix F – Mercur General Site Plan, Revised 2004, Proposed Surety Release Areas (Infrared), Golder Associates, Denver, Colorado, Rev. C.
9. During the hearing, counsel for Barrick proffered the testimony of witnesses prepared to testify in support of the allegations set forth in the petition and the exhibits filed with the petition, and further proffered that the witnesses present would testify as to the facts and

statements set forth in the printout of a PowerPoint presentation entitled "Barrick Resources (USA), Inc. and Barrick Gold Corporation, Request for Agency Action, Partial Reduction of Bond, Mining and Reclamation Plan ACT/045/017". Hard copies of the PowerPoint presentation were also offered, and without objection from the Division, received as evidence.

10. Cedar Creek Associates, Inc. (Cedar Creek) inspected the Mercur Mine and evaluated site conditions. Based on the site evaluation, Cedar Creek prepared the report entitled "2004 Revegetation Surety Release Evaluation." The lands for which Barrick seeks release are depicted as "Reclaimed, Seeking Release" on the drawing submitted as Appendix E to the Amended Petition.
11. Tom Munson, a reclamation hydrologist for the Division testified that an inspection of the property, as provided in Section 4 of the Bonding Agreement, was conducted by the Division during the summer of 2004, as documented in the Inspection Report dated November 24, 2004, which was submitted by the Division and accepted into evidence during the hearing.
12. During the hearing, the Tom Munson presented the Division's Bond Release Findings which certified, in accordance with the Reclamation Contract, that Barrick has reclaimed 775.3 acres of land within the Mercur Mine permit boundary that are severable from the remainder of the Disturbed Area. The 775.3 acres of reclaimed land are depicted as "Reclaimed, Seeking Release" on Appendix E to the Amended Petition. The Bond Release Findings were accepted without objections as evidence.

13. Following release of the 775.3 acres of land delineated as "Reclaimed, Seeking Release" on Appendix E to the Amended Petition, a total of 403.7 acres of land at the Mercur Mine remain subject to reclamation and bonding obligations. Of that total, 36.3 acres have not been reclaimed, while the remaining 367.4 acres are being monitored pending attainment of the applicable reclamation release criteria.
14. In 1998, a per acre reclamation value of \$4,828 was used to calculate the reclamation surety requirement. Using this value, the amount of the bond to be released is \$3,743,148. The remaining bond amount is \$4,766,352.
15. Steven Schneider, Oil and Gas Audit Manager, testified and presented a memorandum dated November 23, 2004 regarding his Barrick Gold Corporation Financial Review, to support his conclusion that Barrick Gold Corporation satisfies all financial strength tests justifying the acceptance of a self-bonding agreement as the form of surety for the remaining reclamation obligations at the Mercur Mine.
16. In accordance with R641-106, notice of the hearing was properly given.

III. Conclusions of Law

1. The Board has jurisdiction to hear Barrick's Petition pursuant to the terms of the Reclamation Contract, the Bonding Agreement, and the provisions of §40-8-14(5) Utah Code (2004) and Utah Administrative Code R641-104 and R647-4-113.6.
2. The reclamation obligations of the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended, have been satisfied by Barrick with respect to the 775.3 acres of Disturbed Area depicted as "Reclaimed, Seeking Release"

on Appendix E to the Amended Petition and those 775.3 acres should be released from all reclamation obligations. Prior to final reclamation release, Barrick shall fully reclaim all roads at the Mercur Mine, including those segments within the released acreage that are not dedicated and accepted as public roads.

3. The existing Bonding Agreement in the amount of \$8,509,500 should be reduced by the amount of \$3,743,148 by virtue of the satisfactory reclamation of the 775.3 acres of Disturbed Area depicted as "Reclaimed, Seeking Release" on Appendix E to the Amended Petition.
4. The amount of \$4,766,352 is sufficient to provide for completion of the remaining reclamation at the Mercur Mine.

The Utah Board of Oil, Gas & Mining, based on the foregoing Findings of Fact and Conclusions of Law and for good cause appearing,

HEREBY ORDERS as follows:

1. Barrick's Petition Requesting Partial Release of Surety for Mining and Reclamation Plan ACT/045/017 is granted.
2. Barrick is released from the reclamation obligations of the Act and implementing rules, the Notice of Intention, as amended, the Reclamation Plan, as amended, and the Reclamation Contract with respect to the 775.3 acres of Disturbed Area depicted as "Reclaimed, Seeking Release" on Appendix E to the Amended Petition. Prior to final reclamation release, Barrick shall fully reclaim all roads at the Mercur Mine, including those segments within the released acreage, that are not dedicated and accepted as public roads.

3. Barrick's obligation under the Bonding Agreement is reduced and released in the amount of \$3,743,148. As provided by the Reclamation Contract, a notice of this release shall be filed in the property records of Tooele and Utah Counties, Utah.
4. The Reclamation Contract and the Bonding Agreement shall be amended to be consistent with this Order.
5. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by *Utah Code Ann.* §63-46b-10(e) to-10(g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. *Utah Code Ann.* §63-46b-14(3)(a) and - 16. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board.

Utah Code Ann. §63-46b-13, entitled, "Agency review - Reconsideration," states:

1(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that *Utah Administrative Code R641-110-100*, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Id. See *Utah Administrative Code R641-110-200* for the required contents of a petition for rehearing. If there is any conflict between the deadline in *Utah Code Ann. §63-46b-13* and the deadline in *Utah Administrative Code R641-110-100* for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

6. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this Order by the Utah Supreme Court.
7. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

SO ORDERED this 17th day of February, 2005.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By W. Allan Mashburn
W. Allan Mashburn, Chairman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Order Granting Petition" was hand delivered or placed in the United States mail postage prepaid addressed to the following persons on this 17th of February, 2005, as follows:

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